

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 99-33511 GFK

*Thomas W. Farmer, Jr. and,
Janet B. Farmer,*

Chapter 13 Case

Debtors.

TRUSTEE'S RESPONSE TO FEE APPLICATION BY ATTORNEY FOR DEBTORS

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorney, makes the following response to the Motion for Hearing for Final Application for Fees and Expenses by law Firm for Debtors ("the Motion") filed by Keate Law Office, P.A. ("Keate").

2. The court will hold a hearing on the Motion on September 20, 2004, at 2:00 p.m., or as soon thereafter as counsel may be heard, in Courtroom 228B, 200 U.S. Courthouse, 316 North Robert Street, St. Paul, MN.

3. The Trustee received \$34,500 from the Debtor, has distributed \$32,774.98, and retains \$1,725.02.

4. The Debtors received a discharge on August 24, 2004.

5. Keate is requesting an allowance of fees for final compensation in the total amount of \$5,708.00 in attorneys' fees and expenses in the amount of \$356.58, for a total allowance of \$6,064.58.

6. Keate's proposed compensation order contemplates that the Trustee will disburse to the law office \$2,000, with the remaining amount to be paid by the Debtors pursuant to their contract with Keate.

7. The Debtors' plan, dated August 6, 1999, filed August 10, 1999, and confirmed September 23, 1999 did not obligate the Trustee to hold funds pending the later of the Debtors' discharge, conversion, or dismissal.

8. The Debtors' confirmed Plan estimated the attorneys' fees at \$2,000. (Emphasis added.) On March 8, 2004, the Trustee's response to the Debtors' motion to vacate dismissal explicitly stated in Item 9 that "[t]he prompt filing of a fee application by Debtors' counsel will enable creditors to evaluate the actual return this class if the Motion is granted and the attorneys' fees are allowed in full as estimated." (Emphasis added.)

9. Keate's fee application was not filed until approximately six months later, on August 20, 2004. On August 2, 2004, the Trustee distributed an additional \$610.24 to creditors. Thus, the Trustee has retained \$1,725.02. The fee application filed by Keate, but not the proposed order, contemplates that the Trustee must pay to Keate \$2,000 on its first regular disbursement date from the funds it has on hand from the Debtors, or its own funds if it cannot recover funds from unsecured creditors by that date.

10. The Trustee was under no obligation under the terms of the confirmed plan to hold funds. The Trustee waited six months after the vacation of the Order to Dismiss on March 9, 2004, for a fee application that was filed on August 20, 2004, after a final distribution to creditors, and four days prior to the Debtors' discharge. The information about the Trustee's disbursement was available to Keate when the fee application was filed. There is no basis for the Trustee to require refunds from unsecured creditors.

9. The Trustee has no objection to paying to Keate the funds actually on hand, in the amount of \$1,725.02, less the Trustee's fee. The fee agreement between Keate and the Debtors explicitly allows for Keate to collect any additional unpaid fees from the Debtors. As such, he is not prejudiced by the Trustee's disbursement of \$1,725.02, less the Trustee's statutory fee. A revised proposed order is attached, correcting what appears to be a mathematical error in Keate's proposed order, and providing for payment of the amount currently held by the Trustee, less the statutory Trustee's fee.

Dated: September 13, 2004

Jasmine Z. Keller, Chapter 13 Trustee

/e/ Margaret H. Culp

Thomas E. Johnson, ID # 52000

Margaret H. Culp, ID # 180609

Counsel to Chapter 13 Trustee

12 South 6th Street, Suite 310

Minneapolis, MN 55402-1521

(612) 338-7591

VERIFICATION

I, Margaret H. Culp, being employed by Jasmine Z. Keller, Chapter 13 Trustee, declare under penalty of perjury that I have reviewed the foregoing and it is true and correct to the best of my knowledge.

Dated: September 13, 2004

/e/ Margaret H. Culp

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-30015 GFK

*Thomas W. Farmer, Jr. and
Janet B. Farmer,*

Chapter 13 Case

Debtors.

**REVISED ORDER ALLOWING FINAL COMPENSATION FOR DEBTORS'
COUNSEL**

At St. Paul, MN, _____, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Motion for Final Compensation for Fees and Expenses by Law Firm for Debtors. The Law firm for Debtors, Keate Law Office, P.A., was represented by Kenneth E. Keate, Esq. Other appearances were as noted in the record. The Motion was made without appearances.

FINDINGS

1. The fees and expenses of the Law Firm for the Debtors were necessary to the administration of the case, reasonably likely to benefit the Debtors' estate or the interests of the Debtors in connection with the bankruptcy case, and were necessary for Debtors to receive a fresh start through Chapter 13.

2. Copies of the itemization of fees and expenses of the Law Firm for which it seeks compensation were mailed to the Debtors, the Chapter 13 Trustee and the U.S. Trustee, and were included in the motion brought by the Law Firm of Debtors seeking final compensation of said fees and expenses.

3. No objection to the fees and expenses has been made.

4. Keate Law Office, P.A. is entitled to FINAL compensation in the amount of \$5,708.00 and \$356.58 for reimbursement of expenses, for a total allowance of \$6,054.58.

5. Keate Law Office has received \$1,010.00 in payments from the Debtors.

6. The Debtors' confirmed Chapter 13 plan estimates attorneys' fees of

\$2,000.

Therefore, the Court hereby makes the following:

ORDER

1. The motion of the Law Firm for Debtors for Final Compensation of Fees and Expenses is hereby granted.
2. Keate Law Office, P.A. is awarded Final Compensation in the amount of \$5,708.00 and reimbursement of expenses in the amount of \$356.58, less the \$1,010.00 paid by the Debtors, for a total allowance for this fee application of \$5,054.58.
3. The Chapter 13 Trustee shall pay to Keate Law Office, P.A., the sum of \$1,725.02, less the statutory Trustee's fee, on the first regular disbursement date after this Order becomes a final order, from funds the Trustee has on hand, with the remainder of the award to be paid by the Debtors.
4. Keate Law Office, P.A. may collect the remainder of the award, less funds paid by the Chapter 13 Trustee, from Thomas W. Farmer, Jr. and Janet B. Farmer, the Debtors herein, pursuant to any signed fee agreement it has with the Debtors, or in the ordinary course of business.

Gregory F. Kishel
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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Chapter 13 Case

Debtors.

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 13, 2004, I served Trustee's Response To Motion For Hearing for Final Compensation for Fees and Expenses by Law Firm for on the individual(s) listed below, in the manner described:

By electronic means:

United States Trustee
Fax: 612-664-5516

Kenneth E. Keate, Esq.
Fax: 651-224-6619

By U.S. Mail, Postage Prepaid:

Kenneth E. Keate, Esq.
Keate Law Office
1102 Grand Avenue
St. Paul, MN 55105

Thomas W. Farmer, Jr.
Janet B. Farmer
506 Portland Avenue
St. Paul, MN 55102

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 13, 2004

/e/ Margaret H. Culp